U.S. Department of Labor

Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400-N
Washington, D.C. 20001-8002

Date: July 10, 1998
Case No.: 98-INA-003

In the Matter of:

YOON'S INTERIOR DESIGN, INC.,
Employer,

On Behalf of:

MYUNG G. KIM,
Alien.

Appearances: Jeffrey J. Rummel, Esq.

Before: Burke, Guill, Vittone
Administrative Law Judges

ORDER OF DISMISSAL

Per Curiam: This case arises from an application for labor certification[1] by an Interior Design company for the position of Design Manager (AF 23-24).[2] The Certifying Officer ("CO") issued a Final Determination ("FD") denying certification on February 21, 1997, on the grounds that Employer failed to establish that the foreign language requirement arose from business necessity in violation of §656.21(b)(2)(i)(C). (AF 6-8). In a request for review dated March 20, 1997, Employer, by and through its counsel, requested review (AF 2). In his request, counsel states that

> Please be advised that Yoon's Interior Design is seeking administrative review of this decision before the Board of Alien Labor Certification Appeals. It believes that ample evidence was provided in the rebuttal to the Notice of Findings to support the employer's requirement that applicants for the job opportunity possess written and spoken fluency in the Korean language. It believes that the decision was arbitrary and capricious and was an abuse of discretion.

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[1] Alien labor certification is governed by the Immigration and Nationality Act, 8 U.S. C. §1182(a)(5)(A) and 20 C.F.R. Part 656. Unless otherwise noted, all references to the regulations may be found in Title 20.

[2] The abbreviation AF shall be used to refer to the Appeal File in this matter.

On October 17, 1997, this Office issued a Notice of Docketing, providing an opportunity for Employer to file a brief or statement of position within twenty-one days of the date of said Notice. To date, the Board has received no such brief or statement of position.

Employer's request for review does not state why the CO erred in regard to its finding that Employer's foreign language requirement was not supported by business necessity. The Board dismisses cases where the request for review fails to set forth specific grounds for review and no brief is filed. *See* ***Bixby/Jalama Ranch***, 88-INA-449 (Mar. 15, 1990); ***North American Printing Ink. Co.***, 88-INA-42 (Mar. 31, 1988) (*en banc*); ***Marine Fabrication***, 95-INA-244 (June 7, 1995). Because Employer has not identified any error, Employer is in violation of 20 C.F.R.§656.26(b)(1). Section 656.26(b)(1) states that requests for review "shall clearly identify the particular labor certification determination from which review is sought; shall set forth the particular grounds for the request". *Id*. Accordingly, the CO's denial of alien labor certification is hereby **AFFIRMED** and this matter is hereby **DISMISSED**.[3]

SO ORDERED.

Entered at the direction of the Panel:

TODD R. SMYTH
Secretary to the Board of
Alien Labor Certification Appeals

TRS/jlh

[3] Assuming, *arguendo*, that Employer had stated grounds for review, the CO's denial would nonetheless be Affirmed. A thorough review of the record reveals that the CO was within her authority to question Employer's Korean language requirement as being in violation of the regulations, and Employer's rebuttal falls far short of establishing business necessity. *See* ***Information Industries, Inc.***, 88-INA-82 (Feb. 8, 1989) (*en banc*); ***Coker's Pedigreed Seed Co.***, 88-INA-48 (Apr. 19, 1989) (*en banc*). Employer's rebuttal consisted of a letter from counsel asserting that the majority of Employer's workforce are Korean Americans who speak little or no English and those who can speak English prefer to speak in Korean, and 90% of Employer's customers are of Korean descent and speak little or no English (AF 9-10). Attached to this letter were contracts (in English) and a copy of an advertisement (not translated) in Korean (AF 11-18). We find that this rebuttal evidence and the record does not document that Employer has a significant foreign language speaking clientele nor does it document that the job duties require the worker to communicate in Korean. *See* ***Details Sportswear,*** 90-INA-25 (Nov. 30, 1990); ***Hidalgo Truck Parts, Inc.***, 89-INA-155 (Mar. 15, 1990). The record as a whole is unpersuasive as it consists of bare assertions that are unsupported by evidence or reason, and is insufficient to carry Employer's burden of proof. *See* ***Gencorp***, 87-INA-659 (Jan. 13, 1988) (*en banc*).